IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1213 OF 2006
IN
FIRST APPEAL NO.404 OF 2006

Municipal Corporation of Gr.Bombay ...Applicant
Vs.
Mr Muhamed Mustakim B. Aazami ...Respondent

Mr K.K. Tated, A.G.P. for the Applicant.
Mr M.B. Kotak for the Respondent.

CORAM : A. S. OKA, J.
DATE : MARCH 08, 2006.

P.C.:

1. Rule. Respondent waives service. Taken up for hearing forthwith.

2. The Respondent is the original Applicant. The Respondent sustained a serious injury in the accident involving a bus of the Appellant/Applicant. In the accident right leg of the Respondent was crushed. Orthopaedics surgeon has assessed his permanent partial disability at 65 per cent. The business of the Respondent was of delivering bread at various stalls in the city of Mumbai. As a result of the crushing injury to the right leg, the same was required to be amputed. The main grievance of the Applicant is that income of the Respondent could not have been taken as Rs.2,500/- per month and at the most it could be Rs.1,500/-. It is submitted by the Applicant that functional disability cannot be considered as 100 per cent.

3. In my view, the execution of the impugned Judgment and Award cannot be stayed unless the entire amount due and payable is deposited by the Applicant/ Appellant in this Court. Considering the fact that the specific challenge in the Appeal seems to be only as regards quantum, the Respondent will have to be permitted to withdraw reasonable amount without furnishing security.

4. Hence, Civil Application is disposed of by passing following order:

(i) There will be interim relief in terms of prayer clause (a) subject to condition that the Applicant will deposit the entire amount due and payable under the impugned Judgment and Award in this Court within a period of ten weeks from today.

(ii) If the amount is not deposited within the stipulated time, interim relief granted will stand vacated automatically without reference to the court.

(iii) After the amount is deposited, the Registrar General will permit the Respondent to withdraw

a sum of Rs.3,00,000/- without security. The Respondent will be permitted to withdraw a further sum of Rs.01,00,000/- on the Respondent furnishing security to the satisfaction of Registrar (Judicial I).

(iv) Rest of the amount will be invested in fixed deposit in any nationalised bank initially for a period of two years and thereafter the fixed deposit will be renewed from year to year.

(v) In the event the Respondent fails to withdraw the sum of Rs.01,00,000/- on furnishing security within a period of four months from date of deposit of the amount, even the said amount of Rs.01,00,000/- will be invested in accordance with the direction given above.

(vi) The deposit of the amount and withdrawal thereof will be without prejudice to the rights and contentions of the parties and subject to final outcome of the Appeal.

(vii) Parties to act upon an authenticated copy of this order.

JUDGE